briefed and limited discovery was conducted, the Court held an evidentiary hearing and heard oral argument on February 14, 2013.[5]

II. Preliminary Injunction Standard

"A preliminary injunction is an extraordinary remedy." Winter v. Natural Res. Def. Council, 555 U.S. 7, 24 (2008). A party seeking a preliminary injunction must show: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm in the absence of the injunction; (3) that the balance of hardships tips in the movant's favor; and (4) that the public interest is not disserved by the issuance of the injunction. Salinger v. Colting, 607 F.3d 68, 79-80 (2d Cir. 2010); Bulman v. 2BKCO, Inc., 882 F. Supp. 2d 551, 557 (S.D.N.Y. 2012). A court can also grant a preliminary injunction "in situations where it cannot determine with certainty that the moving party is more likely than not to prevail on the merits of the underlying claim, but where the costs outweigh the benefits of not granting the injunction." Citigroup Global Mkts., Inc. v. VCS Special Opportunities Master Fund Ltd., 598 F.3d 30, 35 (2d Cir. 2010). The party seeking the injunction must demonstrate "by a clear showing" that the necessary elements are satisfied. Mazurek v. Armstrong, 520 U.S. 968, 972 (1997).

[5] In their opposition brief and at the evidentiary hearing, Defendants referenced the parties' settlement discussions. (Defs.' Opp'n 7-8; Tr. 7-8.) Federal Rule of Evidence 408 bars the use of settlement evidence to establish the validity or invalidity of a claim but permits the admission of such evidence if offered for another purpose. See Starter Corp. v. Converse, Inc., 170 F.3d 286, 293 (2d Cir. 1999). Defendants assert that the evidence should not be excluded by Rule 408 because it provides a "procedural context" for "why . . . [P]laintiff chose to bring a U.S. action four years after starting an action in Hong Kong" and is not offered to prove the invalidity of Plaintiff's claim. (Tr. 14.) The Court rejects this argument and finds in any event, that the evidence's probative value is outweighed by the danger of unfair prejudice pursuant to Rule 403. See Sanders v. Madison Square Garden, LP, 525 F. Supp. 2d 364, 368 (S.D.N.Y. 2007) ("[E]ven if the evidence is not excluded definitively by Rule 408, like any evidence it must pass Rule 403's test."); see also Trebor Sportswear Co. v. The Limited Stores, Inc., 865 F.2d 506, 510-11 (2d Cir. 1989) ("As a general proposition, a trial court has broad discretion as to whether to admit evidence of settlement negotiations offered for 'another purpose.'"). Accordingly, all references to the parties' settlement discussions and positions are to be stricken from the record.

III. Discussion

A. Likelihood of Success on the Merits

In arguing its likelihood of success on the merits, Plaintiff principally relies on its claim for trademark infringement pursuant to Section 32 of the Lanham Act.[6] Section 32(a) of the Lanham Act prohibits the use in commerce, without consent, of any "registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods," in a way that is likely to cause confusion. 15 U.S.C. § 1114(1)(a). To prevail on an infringement action, a plaintiff must demonstrate: (1) "that it has a valid mark entitled to protection," and (2) "that the defendant's use of that mark is likely to cause confusion." Time, Inc. v. Petersen Publ'g Co. LLC, 173 F.3d 113, 117 (2d Cir. 1999); Chloe v. Queen Bee of Beverly Hills, LLC, No. 06 Civ. 3140 (RJH), 2011 WL 3678802, at *3 (S.D.N.Y. Aug. 19, 2011).

Courts look to the following factors, enumerated in Polaroid Corp. v. Polarad Elecs. Corp., 287 F.2d 492 (2d Cir. 1961), to determine whether a likelihood of confusion exists between two sets of marks: (1) the strength of the plaintiff's mark; (2) the similarity of the marks; (3) the competitive proximity of the products in the marketplace; (4) the likelihood that the senior user will "bridge the gap" by moving into the junior user's product market; (5) evidence of actual confusion; (6) the junior user's bad faith in adopting the mark; (7) the respective quality of the products; and (8) the sophistication of the consumers in the relevant market. Id. at 495. "[E]ach factor must be evaluated in the context of how it bears on the ultimate question of likelihood of confusion as to the source of the product." Brennan's Inc. v. Brennan's Rest., LLC, 360 F.3d 125, 130 (2d Cir. 2004) (quoting Lois Sportswear, U.S.A., Inc.

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6 Because the Court grants a preliminary injunction based on Plaintiff's infringement claim and finds this remedy to be sufficient to cure the irreparable harm to Plaintiff, the Court need not address Plaintiff's cybersquatting claim as it pertains to Defendants' U.S. based websites, counterfeiting claim, or unfair competition claim. The Court does not address Plaintiff's cybersquatting claim as it pertains to the HK Website because, as discussed below, the Court declines to exercise jurisdiction over that foreign website.

v. Levi Strauss & Co., 799 F.2d 867, 872 (2d Cir. 1986)). Because the analysis for the first prong of an infringement claim—whether a trademark is valid and entitled to protection—overlaps with the analysis used to assess the first Polaroid factor—strength of Plaintiff's mark—the Court discusses the strength and validity of the Juicy Marks together. See Arrow Fastener Co., Inc. v. Stanley Works, 59 F.3d 384, 391 (2d Cir. 1995) ("A court's inquiry regarding the strength of a mark often parallels the inquiry concerning the mark's validity, inasmuch as the strength or distinctiveness of a mark determines both the ease with which it may be established as a valid trademark and the degree of protection it will be accorded.") (citations and internal quotation marks omitted).

1. Validity and Strength of Plaintiff's Marks

"The strength of a particular mark is measured by the degree to which it indicates source or origin of the product." Nora Beverages, Inc. v. Perrier Grp. of Am., Inc., 269 F.3d 114, 123 (2d Cir. 2001). A mark's strength may be based on its inherent distinctiveness or the distinctiveness it has acquired in the marketplace. See Brennan's, 360 F.3d at 130-31. Registered marks are presumptively distinctive, although this can be overcome by showing that a registered mark is generic or is descriptive without secondary meaning. Abercrombie & Fitch Co. v. Hunting World, Inc., 537 F.2d 4, 11 (2d Cir. 1976); Giggle, Inc. v. netFocal, Inc., 865 F. Supp. 2d 625, 629-30 (S.D.N.Y. 2012). "[W]hen a plaintiff sues for infringement of its registered mark, the defendant bears the burden to rebut the presumption of [the] mark's protectibility by a preponderance of the evidence." Lane Capital Mgmt., Inc. v. Lane Capital Mgmt., Inc., 192 F.3d 337, 345 (2d Cir. 1999). Defendants have not presented any evidence that the presumption is inapplicable in this instance. Accordingly, the Juicy Marks "should be afforded the utmost protection." Lois Sportswear, 799 F.2d at 871.

Furthermore, Plaintiff has demonstrated that these marks have acquired distinctiveness. In determining whether a mark has acquired distinctiveness, courts consider a number of non-exhaustive factors: (1) advertising expenditures; (2) sales success; (3) unsolicited media coverage of the product; (4) attempts to plagiarize the mark; (5) the length and exclusivity of the mark's use; and (6) consumer studies linking the name to the source. See Thompson Med. Co., Inc. v. Pfizer Inc., 753 F.2d 208, 217 (2d Cir. 1985). No one factor is determinative, and not all factors need to be proved. L & JG Stickley, Inc. v. Canal Dover Furniture Co., Inc., 79 F.3d 258, 263 (2d Cir. 1996). Plaintiff has spent "hundreds of millions of dollars on advertising and promoting goods and services offered in connection with the Juicy Marks" and Juicy products generated over $1.5 billion in sales from 2009 through 2011 alone. (Samuelson Decl. ¶¶ 10-13.) Plaintiff has also been the subject of widespread media coverage, both solicited and unsolicited. Its products, including but not limited to its "signature" velour tracksuit, have been used in popular movies, television shows and print media, and have been worn by a long list of Hollywood celebrities. (Id. at ¶ 10.)

Given the degree of protection afforded to registered marks and the acquired distinctiveness of the Juicy Marks, the marks are valid and deserving of protection, satisfying the first element of an infringement claim, and are strong marks, providing persuasive support for a finding of a likelihood of confusion under the first Polaroid factor.

2. The Similarity of the Marks

When evaluating the similarity of marks, "courts look to the overall impression created by the [marks] and the context in which they are found and consider the totality of factors that could cause confusion among prospective purchasers." Gruner + Jahr USA Publ'g v. Meredith Corp., 991 F.2d 1072, 1078 (2d Cir. 1993). Defendants' marks, JUICY GIRL, JUICYLICIOUS